STATE OF VERMONT
BOARD OF MEDICAL PRACTICE

In re: William A. O'Rourke, Jr., M.D.	)	Docket No. MPN 19-0302

SPECIFICATION OF CHARGES

NOW COMES, the State of Vermont, by and through Attorney General William H. Sorrell and the undersigned Assistant Attorney General, James S. Arisman, and alleges as follows.

1. William A. O'Rourke, Respondent, a Rutland internist, holds Vermont Medical License Number 042-0002399, issued by the Vermont Board of Medical Practice on September 10, 1958.

2. Jurisdiction in these matters vests with the Vermont Board of Medical Practice pursuant to 26 V.S.A. §§ 1354, 1355-1357, 1361, 1365-1366, 1398 and 3 V.S.A. § 809-814.

I. Prior Unprofessional Conduct of Respondent and Disciplinary Action.

3. The Vermont Board of Medical Practice opened a complaint against Respondent O'Rourke on June 4, 2002 following review of Respondent's prescribing for a patient. The Board's investigation established that Respondent prescribed a controlled substance for the family member of another physician (hereinafter referred to as Patient A) without first examining her or taking a medical history from her.

4. By Stipulation and Consent Order with the Board of Medical Practice,

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approved and entered as a Board order on November 5, 2003,[1] Respondent admitted that he, in fact, had prescribed a controlled substance for Patient A without first examining her or taking a medical history from her.

5. Pharmacy records and other information reviewed during the Board's investigation established that Respondent had prescribed one or more DEA schedule controlled substances for Patient A without examining her or taking a medical history from her. Respondent first prescribed for the patient on November 9, 2001. On a second occasion, on May 15, 2002, Respondent again prescribed a controlled substance for Patient A. The Board's investigation determined that Respondent failed to maintain proper patient medical records for Patient A on each of the occasions in question.

A. The Controlled Substances in Question.

6. Board investigation determined that on or about November 9, 2001 Respondent prescribed 100 Vicoden ES tablets[2] for Patient A. The prescription authorized five refills, for 100 Vicoden tablets. The prescription was filled the patient on November 13, 2001. The prescription was refilled by the patient on January 28, 2002. Respondent expressly admitted writing the November 9, 2001 prescription (and another on May 15, 2002).

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1. Hereinafter, this agreement is referred to as the November 5, 2003 Stipulation and Consent Order. A copy of this agreement is attached hereunto as Exhibit 1.

2. Vicodin ES Tablets (hydrocodone bitartrate and acetaminophen) are composed of a semi-synthetic narcotic analgesic and antitussive with multiple actions qualitatively similar to those of codeine. Vicodin ES tablets are indicated for the relief of moderate to moderately severe pain. The United States Drug Enforcement Administration has identified Vicodin as a drug with serious abuse potential and described abuse of the drug as "a 'white collar' addiction" in which "the most likely abuser is a white female, age 20-40 years, who abuses the drug because she is dependent". See Diversion Control Program, Drugs and Chemicals of Concern at www.deadiversion.usdoj.gov/drugs-concern/hydrocodone/hydrocodone.htm. The drug can be habit forming, can impair physical or mental performance, and can produce psychic dependence, physical dependence, and tolerance, following repeated administration. Vicodin ES is a DEA Schedule III drug.

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7. Respondent's records include no indication that he took a medical history or conducted a physical examination of Patient A or even saw her at all for medical purposes on November 9, 2001 prior to prescribing the controlled substance for her. Respondent's medical records for Patient A for November 9, 2001 include no detail and/or information setting forth the patient's complaint or problem, objective findings, assessment of condition, or plan of care. The medical record for Patient A on this date consisted of an unsigned, one-sentence entry that includes no substantive information attributable to Respondent.

8. The Board's investigator on February 11, 2002 obtained from Respondent's office a copy of the medical records for Patient A for the date of November 9, 2001. See above. Shortly after the investigator's visit, Patient A on February 20, 2002 visited Respondent and apparently saw him as a patient, face-to-face, for the first time. Respondent possessed no medical records for Patient A documenting that he had ever seen her previously as a patient.

9. Respondent on February 20, 2002 prepared a medical record documenting the patient's office visit. This record included some substantive content. It is not clear from this record, however, whether Respondent actually examined the patient on February 20, 2002 or provided any medical counsel or recommendations to her. For example, Respondent's medical records for the office visit of Patient A on February 20, 2002 include no indication that he (a) reviewed information from other practitioners or questioned the patient regarding prior history and treatment; (b) discussed with her possible referrals to specialists; (c) discussed with her the known risks and benefits of using controlled substances for pain control; (d) assessed her medical needs or developed a treatment plan and objectives; and/or (e) scheduled or addressed follow-up communication with her or a subsequent office visit.

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10. Respondent's office records for the February 20, 2002 office visit consist of two pages of forms with several headings and blanks that have been partially filled in, apparently by Respondent. The entries are unsigned. Several entries in the record would be illegible or unclear to other readers.

11. Respondent's medical records indicate that he subsequently prescribed Vicodin ES tablets (with three refills) on May 15, 2002 for Patient A, as well as Ambien 10 mg. tablets (with three refills).[3] Respondent's medical records for Patient A for May 15, 2002 include no indication that Respondent actually saw the patient on that date. The entry in the medical records for May 15, 2002 includes no substantive information as to her weight or blood pressure, general physical condition, details as to any complaint or ongoing medical problems, other drugs taken, or allergies. In sum, Respondent's medical records for Patient A for May 15, 2002 include no entry for the patient's current complaint, no objective findings or observations, no assessment of her condition, and no plan of care for her.

12. Respondent's medical records for Patient A were substandard and his care and treatment of Patient A was unprofessional. Respondent provided the following written admission to the Board as to his unprofessional conduct:

> Respondent expressly agrees that he initially prescribed for Patient A without examining her or taking her medical history. He agrees that his medical records for November 9, 2001 and May 15, 2002 include no entry to indicate that he took a detailed medical history from Patient A or examined her.

See November 5, 2003 Stipulation and Consent Order at Paragraph 15.

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3. Ambien (zolpidem tartrate) is a non-benzodiazepine hypnotic indicated for the short-term treatment of insomnia. Ambien is a DEA Schedule IV controlled substance. Ambien use presents a

13. Respondent in the November 5, 2003 Stipulation and Consent Order agreed to adoption by the Board of Medical Practice, as its findings, the State's factual recitation regarding his deficient medical record keeping and his failure to examine Patient A and take a medical history from her.

B. The Legal Remedy Agreed to by Respondent in 2003.

14. With representation and advice of counsel, Respondent knowingly and voluntarily agreed to remedial terms that were clearly set forth in writing in the November 5, 2003 Stipulation and Consent Order. **See Exhibit 1 (attached).** Respondent agreed to the following:

a) his medical license to be conditioned for a minimum of 24 months;

b) full compliance by him with all terms of the November 5, 2003 Stipulation and Consent Order;

c) all prescribing of controlled substances by him to be based upon "a current diagnostic assessment and treatment plan" with specific entries for the patient's diagnosis or condition and rationale for prescribing; all such records to be produced for review by the Board upon request; and

d) remedial education in controlled substance management, including appropriate medical record keeping related to such prescribing.

15. As to the required remedial education component of the November 5, 2003 Stipulation and Consent Order, Respondent also knowingly and voluntarily and expressly agreed to the following:

> Respondent agrees that within one year of approval of this Stipulation and Consent Order he shall satisfactorily complete, at his own expense, educational coursework, subject to review and approval, in its sole discretion, by the Vermont Board of Medical Practice. Such course-work shall address the legal and professional requirements related to the judicious prescribing of controlled substances, including related

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risk of dependency and overdose, withdrawal symptoms, and daytime drowsiness or dizziness.

> medical record keeping. The coursework identified immediately below shall be deemed to satisfy this requirement. (Emphasis added.)
>
> Controlled Substance Management: In fulfillment of the above condition Respondent agrees that he shall promptly attend and successfully complete the four-day intensive course in controlled substance management which is offered by the School of Medicine of the Case Western University. Such coursework shall include development of treatment plans and medical record keeping. Respondent agrees that his attendance shall take place as soon as reasonably practicable, i.e., upon the first occasion that such course is offered following the effective date of this agreement. Respondent agrees that he shall document his attendance and successful completion of this coursework by prompt submission to the Board of appropriate certification, documentation, and/or evaluation of his coursework. Respondent shall bear all costs.
>
> The above coursework shall be eligible for credit as "continuing medical education" and be eligible for a total credit of at least 40.0 hours in Category I of the Physician's Recognition Award of the American Medical Association. Respondent's participation must earn the full 40.0 hours of credits for such course work. Respondent shall be responsible for ensuring that documentation of and evaluations of Respondent's participation in and satisfactory completion of such coursework are promptly forwarded to the Board of Medical Practice for its review. Such documentation must be provided in a manner and form satisfactory to the Board and in no case later than 30 days after Respondent's completion of any individual course. Respondent shall bear all costs.

See November 5, 2003 Stipulation and Consent Order at Paragraphs 25-27.

II. Ccurrent Unprofessional Conduct of Respondent.

A. Failure to Comply with Remedial Education Requirements.

16. Respondent knowingly has failed to abide by the terms of his November 5, 2003 Stipulation and Consent Order with the Board of Medical Practice. Specifically, Respondent failed to complete within one year of the effective date of his agreement with the Board educational coursework, to be approved by the Board, "address[ing] the legal and professional requirements related to the judicious prescribing of controlled substances, including related medical record keeping", as required by Paragraphs 26-28 of that agreement.

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Respondent has no reasonable, proper basis for his failure to act in conformity with his Stipulation and Consent Order. Thus, Respondent failed to act in good faith as to his legal obligations to the Board and his professional obligations to his patients.

17. Respondent's failure to attend the specific coursework identified and expressly required under Paragraph 27 of the November 5, 2003 agreement was repeated, intentional, and egregious. The coursework was offered on three separate occasions after the effective date of the agreement, i.e., courses were available on December 10-13, 2003, May 19-22, 2004, and December 15-18, 2004. Respondent made no effort to attend any of these educational offerings.

18. Respondent actively attempted to avoid compliance with the express requirements for remedial education that he had agreed to in Paragraphs 26-28. On one occasion, the assigned Board investigative committee received and reviewed a "proposal" submitted by Respondent seeking to evade having to pursue the legally required coursework. The investigative committee found that the "proposal" was insufficient to meet the requirements of Respondent's agreement and that in any case Respondent's proposal was simply vague and lacking in substantive detail.[4] The undersigned Assistant Attorney General wrote to Respondent's attorney, on June 20, 2004, and conveyed the position of the investigative committee, as well as indicating that the required coursework identified in Paragraph 27 would again be offered at Case Western Reserve in December 2004 and that Respondent should plan to attend.

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4. In fact, the November 5, 2003 Stipulation and Consent Order included no provision authorizing Respondent unilaterally to propose or seek to substitute other coursework for the specific remedial education component identified in Paragraph 27 of the agreement.

B. *Ex Parte* Communication by Respondent.

19. On or about July 15, 2004, Respondent attempted to engage in improper *ex parte* communication by writing directly to a member of the Board, who was the chair of the investigative committee assigned to monitor his compliance with his Board agreement. Board Rule 17.1. At the time, Respondent was represented by counsel. Respondent's letter sought to avoid having to comply with the express educational requirements of his agreement with the Board. Subsequent to this communication, Respondent's attorney on August 4, 2004 wrote to the undersigned Assistant Attorney General, stated that the *ex parte* communication by Respondent with the Board member had occurred without the attorney's knowledge. Counsel stated that he would no longer be representing Respondent.

20. On September 9, 2004, the undersigned Assistant Attorney General wrote directly to Respondent O'Rourke (who was then unrepresented by counsel) and provided the following notice to him at the direction of the North Investigative Committee:

> [Y]ou must comply with all requirements of the Stipulation and Consent Order as written, including the specific CME coursework that is identified therein. . . .
>
> Your stipulation/order at paragraphs 26 through 28 is quite specific and requires 40 hours of credits to be fulfilled by attendance at the four-day Intensive Course in Controlled Substance Management at Case Western Reserve University in Cleveland. That course will be offered on December 15-18, 2004. The investigative committee indicated its willingness to agree to your attendance at the December course at Case Western, but they are unwilling to provide any further accommodation. The Board regularly sends physicians to the Case Western program and these practitioners have had no difficulty finding the time and making the commitment to attend.
>
> Please make the necessary arrangements to attend the December Case Western program in December 2004. Should you fail to do so, you will be subject to charges of unprofessional conduct related to the original underlying matter and to additional charges under 26 V.S.A. § 1354(a)(25) (failure to comply with an order of the board or violation of any term or condition of

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a license which is restricted or conditioned by the board). Should you fail to attend as required, I will file these charges, as well as alleging counts under other applicable statutory provisions. (Emphasis in original.)

C. Investigator Ciotti's Communication with Respondent.

21. On or about December 22, 2004, Board investigator Philip J. Ciotti contacted Respondent O'Rourke to learn whether he had complied with Paragraphs 26-28 of the November 5, 2004 Stipulation and Consent Order. Respondent stated that he had not attended the December 2004 Case Western educational coursework and that he had already made clear that he had no intention of attending the course at Case Western.

22. Respondent indicated, without more, that he might look into taking a course at some other time. Respondent provided no further answer regarding his failure to attend the required coursework. Investigator Ciotti thereafter terminated the conversation in light of Respondent's apparent lack of cooperation and unwillingness to honor the promises he made in the November 5, 2003 Stipulation and Consent Order. Respondent displayed little or no interest in pursuing the required coursework.

III. State's Allegations of Unprofessional Conduct.

Count 1

23. Paragraphs 3 through 22, above, are restated and incorporated by reference.

24. Respondent knowingly failed to attend remedial educational coursework within one year of approval of the November 5, 2003 Stipulation and Consent Order, as required by Paragraphs 26-28 of that agreement. Respondent's conduct, as set forth in pertinent paragraphs above, on one or more occasions violated terms of the November 5, 2003 agreement. His conduct thereby constitutes a violation of 26 V.S.A. § 1354(a)(25) (failure to

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comply with an order of the board or violation of any term or condition of a license that is restricted or conditioned by the board). Such conduct by Respondent is unprofessional.

Count 2

25. Paragraphs 3 through 24, above, are restated and incorporated by reference.

26. Respondent failed to attend the required remedial educational coursework within one year of entry of the November 5, 2003 Stipulation and Consent Order, as required by Paragraphs 26-28 of the agreement. Respondent's conduct, as set forth in pertinent paragraphs above, in knowingly failing to honor the legal and professional obligations he had agreed to in writing, also constitutes dishonorable and/or other unprofessional conduct and thus, in this regard is in violation of 26 V.S.A. § 1398 and is subject to disciplinary action by the Board.

27. Alternatively, Respondent's agreement, as set forth in Paragraphs 26-28 of the November 5, 2003 Stipulation and Consent Order, which he later intentionally failed to honor, constitutes the making of false and fraudulent representations that are in violation of 26 V.S.A. § 1398 and, thus, are subject to disciplinary action by the Board.

Count 3

28. Paragraphs 3 through 27, above, are restated and incorporated by reference.

29. Respondent's conduct in knowingly and willfully disregarding the required remedial educational coursework expressly identified in the November 5, 2003 Stipulation and Consent Order constitutes evidence of unfitness to practice within the regulated field of medicine. Such conduct is violative of 26 V.S.A. § 1354(a)(7) and is unprofessional.

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Count 4

30. Paragraphs 3 through 29, above, are restated and incorporated by reference.

31. Respondent's written *ex parte* communication with a member of the Board of Medical Practice, in an effort to influence the member's actions and avoid attending the required remedial educational coursework he had agreed to in writing in the November 5, 2003 Stipulation and Consent Order, constitutes dishonorable and/or unprofessional conduct that is in violation of 26 V.S.A. § 1398. Such conduct thereby is subject to Board discipline.

Count 5

32. Paragraphs 3 through 13, above, are restated and incorporated by reference.

33. Respondent's practice of medicine as to Patient A, as described above, failed to meet the requisite standard of medical care on one or more occasions. On one or more occasion, Respondent failed to take and/or maintain a proper written medical history from the patient and/or failed to perform an appropriate and documented physical examination of the patient. Respondent's practice of medicine as to Patient A, as described above, also did not include creating and maintaining an appropriate written medical record identifying relevant information such as the patient's subjective complaint(s), objective symptoms, vital signs, physician's assessment, and plan of care.

34. Respondent's deficient care of Patient A and/or deficient record keeping, as described above, constitutes a gross failure to use and exercise on a particular occasion or the failure to use and exercise on repeated occasions that degree of care, skill and proficiency which is commonly exercised by the ordinary skillful, careful and prudent physician engaged

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in similar practice under the same or similar conditions, whether or not actual injury to a patient has occurred. Such conduct by Respondent thereby constitutes a violation of 26 V.S.A. § 1354(a)(22) and is unprofessional.

35. Alternatively, such deficient care, on one or more occasions, constitutes a violation of 26 V.S.A. § 1354(b)(1) (failure to practice competently by performance of unsafe or unacceptable patient care); and/or 26 V.S.A. § 1354(b)(2) (failure to conform to the essential standards of acceptable and prevailing practice). Such conduct by Respondent is unprofessional.

WHEREFORE, petitioner, the State of Vermont, moves the Board of Medical Practice, pursuant to 26 V.S.A. §§ 1356-1361 and/or § 1398, to revoke or take such other action, as is provided by statute and as shall be warranted by the facts, as to the medical license of Respondent, William A. O'Rourke, Jr., M.D.

Dated at Montpelier, Vermont this 24th day of January 2005.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

by: _____
JAMES S. ARISMAN
Assistant Attorney General

****

Foregoing Charges, In re: William A. O'Rourke, Jr., M.D., Issued:

Margaret Funk Martin
MARGARET FUNK MARTIN
Secretary, Vermont Board of Medical Practice

Signed and Dated at Middlebury, Vermont this 4th day of February 2005.

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EXHIBIT 1

STATE OF VERMONT
BOARD OF MEDICAL PRACTICE

In re: William A. O'Rourke, Jr., M.D.	)	Docket No. MPN 19-0302

STIPULATION AND CONSENT ORDER

NOW COME William A. O'Rourke, Jr., M.D. (Respondent), and the State of Vermont, by and through Attorney General William H. Sorrell and the undersigned Assistant Attorney General, James S. Arisman, and agree and stipulate as follows:

1. William A. O'Rourke, Respondent, a Rutland internist, holds Vermont Medical License Number 042-0002399, issued by the Vermont Board of Medical Practice on September 10, 1958.

2. Jurisdiction vests in the Vermont Board of Medical Practice (Board) by virtue of 26 V.S.A. §§ 1353, 1354 & 1398.

I. Background.

3. The Vermont Board of Medical Practice opened a complaint on June 4, 2002 following preliminary review of Respondent's prescribing for a patient. The Board's investigation established that Respondent had prescribed a DEA controlled substance for the family member of another physician (hereinafter referred to as Patient A) apparently without first examining her or taking a medical history from her. The Board's investigation included review of Respondent's office records, pharmacy records, interviews with individuals having knowledge of the facts in this matter, and receipt of a written response from Respondent regarding this matter.

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4. Respondent agrees that he prescribed for Patient A. In fact, pharmacy records and other information reviewed by the Board corroborated that Respondent had prescribed one or more DEA controlled substances for Patient A without examining the patient or taking a medical history from her. Respondent first prescribed for the patient on November 9, 2001. On a second occasion, on May 15, 2002, Respondent again prescribed a controlled substance for Patient A. The Board's investigation determined that Respondent failed to maintain appropriate patient medical records that would establish the basis for his prescribing for Patient A on the two occasions in question.

II. State's Detailed Allegations.

A. Initial Prescribing by Respondent for Patient A.

5. The Board's review of Patient A's medical records indicates that Respondent first provided medical care to the patient on or about November 9, 2001. The Board's investigation determined that on or about November 9, 2001 Respondent O'Rourke prescribed 100 Vicoden ES tablets[1] (hydrocodone bitartrate and acetaminophen) for Patient A, who is the spouse of another Rutland-area physician. The prescription authorized five refills, for 100 Vicoden tablets. The prescription was first filled by Patient A on November 13, 2001. The prescription was refilled by Patient A on January 28, 2002. As noted above, Respondent has admitted writing the November 9, 2001 prescription (and another on May 15, 2002).

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1. Vicodin ES Tablets (hydrocodone bitartrate and acetaminophen) are composed of a semi-synthetic narcotic analgesic and antitussive with multiple actions qualitatively similar to those of codeine. Vicodin ES tablets are indicated for the relief of moderate to moderately severe pain. The drug may be habit forming, may impair physical or mental performance, and may produce psychic dependence, physical dependence, and tolerance, following repeated administration. Vicodin ES is a DEA Schedule III drug.

B. Respondent's Medical Records for Patient A for November 9, 2001.

6. Respondent's medical records include no indication that he took a medical history or conducted a physical examination of Patient A on November 9, 2001 prior to first prescribing for her. Respondent did not see Patient A on November 9, 2001.

7. Respondent's medical records for Patient A for November 9, 2001 include no detail and or information setting forth the patient's subjective complaint or problem, the objective findings, assessment of condition, or plan of medical care. The entire medical record for Patient A for November 9, 2001 consists solely of the following unsigned note:

> [Patient's name] 11-9-01 States Steve at Rut Pharmacy prefers another MD (other than [*name of Patient A's husband*]) be in Charge of Vicodan [*sic*] ES which she takes "once in a while" for disc problem.
>
> Vicodan [*sic*] ES #100 as directed

C. The February 20, 2002 Medical Records.

8. The Board's investigator on February 11, 2002 obtained a copy of Patient A's office record for November 9, 2001 from Respondent's office. See above. Shortly thereafter, on February 20, 2002, Patient A visited Respondent and apparently saw him as a patient, face-to-face, for the first time. Respondent wrote a medical record for the patient's visit that included some substantive content. It is not clear from the record, however, whether Respondent examined the patient on February 20, 2002 or took a detailed medical history from her.

9. Specifically, Respondent's medical records for Patient A's office visit on February 20, 2002 also include no indication that he (a) reviewed information from other practitioners or questioned the patient regarding prior treatment and referrals; (b) discussed

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with her possible referrals to specialists; (c) discussed with her the known risks and benefits of using controlled substances for pain control; (d) assessed her medical needs and developed a treatment plan and objectives; and (e) scheduled follow-up communication with her and a subsequent office visit.

10. The office records for the February 20, 2002 office visit consist of two pages of forms with headings and blanks that have been partially filled in, apparently by Respondent. The entries are unsigned. Individual entries in the records in a number of cases would be unclear to other readers, difficult to decipher, and minimal in content.

C. The May 15, 2002 Medical Records.

11. Respondent's medical records indicate that he again prescribed Vicodin ES tablets (with three refills) on May 15, 2002 for Patient A, as well as Ambien 10 mg. tablets (with three refills).[2] Patient A's medical records for May 15, 2002, as prepared by Respondent, include no indication that he saw the patient on that date. The entry in the medical records for May 15, 2002 includes no substantive information as to her weight or blood pressure, general physical condition, details as to medical problems, other drugs taken, or allergies. Respondent's medical records for Patient A for May 15, 2002 include no detailed information setting forth the patient's subjective complaint or problem, objective findings, assessment of condition, or plan of care. The medical record for Patient A for May 15, 2002 consists solely of the following unsigned note:

Vicodan [*sic*] ES #30 As Directed X 3
Ambien 10 mg #30 T HS X 3

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2. Ambien (zolpidem tartrate) is a non-benzodiazepine hypnotic indicated for the short-term treatment of insomnia. Ambien is classified as a DEA Schedule IV controlled substance. Ambien use presents a risk of dependency and overdose, withdrawal symptoms, and daytime drowsiness or dizziness, among other adverse side effects

12. In sum, with regard to Paragraphs 5 through 11, above, and the drugs identified therein, Patient A's medical records include no indication that the patient was examined by Respondent, no indication that a history and physical was taken or reviewed by Respondent, and do not provide a clinical basis and explanation as to why the drugs identified above were prescribed by Respondent for Patient A. The medical records for Patient A include no detailed written description or assessment by Respondent as to any pain that Patient A may have been experiencing at the time each prescription was written.

D. Respondent's Position.

13. Respondent's written explanation to the Board indicated that he already was aware that Patient A "had back problems" at the time he first prescribed for her. Respondent had worked closely with Patient A's husband, a physician colleague, for over twenty years. He explained, " It would not be abnormal for me to assume that I would undertake the care of his wife. I knew that [Patient A] would not usually require the care of an internist, other than her husband, because of her relatively young age, and the situation, to me, did not appear to be abnormal." Respondent has stressed that he had cared for numerous other members of Patient A's family. Respondent has indicated that he was aware of no reason to be concerned that this situation might involve diversion or dependency.

III. Remedy.

14. Respondent has cooperated fully with all phases of the Board's investigation of this matter. Consistent with his continuing cooperation with the Board, Respondent agrees that if the State were to satisfy its burden at hearing as to the facts alleged in paragraphs 5 through 13 that a finding adverse to him could be entered by the Board, pursuant to 26 V.S.A.

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§ 1354. In the interest of resolving this matter expeditiously and continuing his full cooperation in this matter, Respondent agrees that the Board of Medical Practice may adopt and enter paragraphs 5 through 15 of this agreement as uncontested findings of fact and/or conclusions in this matter. Notwithstanding Respondent's belief at the time that he was acting appropriately in prescribing a controlled substance for the family member of a colleague, he agrees that the Board of Medical Practice may adopt and enter these findings and/or conclusions, pursuant to this agreement.

15. Respondent expressly agrees that he initially prescribed for Patient A without examining her or taking her medical history. He agrees that his medical records for November 9, 2001 and May 15, 2002 include no entry to indicate that he took a detailed medical history from Patient A or examined her.

16. Respondent acknowledges and agrees that he is knowingly and voluntarily agreeing to this Stipulation and Consent Order. He acknowledges and agrees that he has had advice of counsel regarding the matter before the Board and has had advice of counsel in reviewing this Stipulation and Consent Order. Respondent is satisfied with all counsel and representation he has received in this matter. He agrees and understands that by executing this document he is waiving any right to be served with formal charges, to challenge the jurisdiction and continuing jurisdiction of the Board in this matter, to be presented with any evidence adverse to him, to cross-examine witnesses, and to offer evidence of his own to contest the State's allegations.

17. The parties to this Stipulation and Consent Order agree that appropriate disciplinary action in this matter shall consist of imposition of conditions upon Respondent's

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license to practice medicine. Respondent's license to practice medicine shall be designated as "conditioned" for a period of 24 months from the effective date of the Board's Order approving this Agreement, and Respondent shall comply fully and in good faith with each of the terms and conditions of licensure set forth below, until such time as he has been relieved of all conditions herein by express written order of the Vermont Board of Medical Practice.

18. No specification of charges has been filed by the State in this matter. Respondent has not previously been the subject of disciplinary action by the Vermont Board of Medical Practice.

IV. Terms and Conditions of Licensure.

A. General.

19. Respondent agrees that he has read and carefully considered all terms and conditions herein and agrees to accept and be bound by these while licensed to practice medicine in the State of Vermont or elsewhere and to be bound by these until such time in the future as he may be expressly relieved of these conditions, in writing, by the Vermont Board of Medical Practice.

20. Respondent's license to practice medicine in the State of Vermont shall be conditioned for a minimum of 24 months following entry of the Board's Order approving the terms of this agreement. Respondent's Vermont license to practice medicine shall include the designation "Conditioned" until such time as all terms and conditions upon his medical license have been removed.

21. During the period that Respondent's medical license is conditioned he shall comply fully with all the requirements set forth herein. Respondent also agrees that he shall

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abide by and follow all recommendations that are presented to him by those conducting all such education and/or training as he shall attend under the terms of this agreement. He expressly agrees that he shall promptly sign any and all necessary consents and/or waivers of confidentiality as to his participation in such training, so as to permit full and complete disclosure to the Board for the purpose of permitting the Board to monitor his participation.

B. Prescribing and Dispensing.

22. During the life of this agreement Respondent agrees that each office patient for whom he prescribes controlled substances in the course of his practice shall have a current diagnostic assessment and treatment plan which shall be available for review by the Board at any time while conditions remain upon Respondent's license to practice medicine. Each such treatment plan shall include specific entries regarding the patient's diagnosis or condition and the rationale for prescribing each such controlled substance for the patient. Each such plan shall be promptly made available for review by the Board or its agent upon request.

23. Each controlled substance that is prescribed for a patient shall be clearly noted in writing in the patient's office record with the date of prescribing indicated. Medical records of patients cared for by Respondent may be reviewed forthwith and at any time by the Board or its agents, pursuant to 18 V.S.A. § 4218(c), other applicable authorities, and the terms and conditions herein, to determine compliance with this agreement. This requirement is not intended to apply to those circumstances in which Respondent is providing call coverage for the regular patients of other physicians, but in each such circumstance, Respondent shall keep copies of all records relating to care for such other patients.

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24. Respondent agrees that all prescriptions by him for patients seen (other than those in hospital and nursing home settings) for DEA schedule II, II, and IV drugs shall be copied and retained in duplicate by him during the life of this agreement. One copy of each such prescription shall be promptly placed in a chronologically-ordered file which shall be made available for review by the Board or its agents, at any time and without prior notice, upon request. The other copy shall be placed in the patient's chart.

25. Respondent expressly acknowledges and agrees he may prescribe only for bona fide patients who are seen by Respondent in his office or in a nursing home or hospital setting except when he is providing regularly scheduled call coverage for established patients of another physician.

C. Education.

26. Respondent agrees that within one year of approval of this Stipulation and Consent Order he shall satisfactorily complete, at his own expense, educational coursework, subject to review and approval, in its sole discretion, by the Vermont Board of Medical Practice. Such coursework shall address the legal and professional requirements related to the judicious prescribing of controlled substances, including related medical record keeping. The coursework identified immediately below shall be deemed to satisfy this requirement.

27. Controlled Substance Management: In fulfillment of the above condition, Respondent agrees that he shall promptly attend and successfully complete the four-day intensive course in controlled substance management which is offered by the School of Medicine of the Case Western University. Such coursework shall include development of

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treatment plans and medical record keeping. Respondent agrees that his attendance shall take place as soon as reasonably practicable, i.e., upon the first occasion that such course is offered following the effective date of this agreement. Respondent agrees that he shall document his attendance and successful completion of this coursework by prompt submission to the Board of appropriate certification, documentation, and/or evaluation of his coursework. Respondent shall bear all costs.

28. The above coursework shall be eligible for credit as "continuing medical education" and be eligible for a total credit of at least 40.0 hours in Category I of the Physician's Recognition Award of the American Medical Association. Respondent's participation must earn the full 40.0 hours of credits for such course work. Respondent shall be responsible for ensuring that documentation of and evaluations of Respondent's participation in and satisfactory completion of such coursework are promptly forwarded to the Board of Medical Practice for its review. Such documentation must be provided in a manner and form satisfactory to the Board and in no case later than 30 days after Respondent's completion of any individual course. Respondent shall bear all costs.

D. Express Assurances.

29. Respondent assures, consistent with his continuing full cooperation with the Board of Medical Practice, that hereafter he shall not prescribe medications of any kind for any patient or individual whom he has not first examined and for whom he has not taken a medical history. Respondent further assures that he shall prescribe only for bona fide patients

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who are seen by him his office or in a hospital setting. If Respondent is "on call", he assures that he shall prescribe only for those patients who are bona fide patients of the physician for whom he is taking "call".

30. Respondent further assures that hereafter each patient for whom he prescribes controlled substances shall have a current diagnostic assessment and treatment plan which shall be available for review by the Board at any time. Each such plan shall include specific entries regarding the patient's diagnosis or condition and the rationale for prescribing each such controlled substance for the patient. Each controlled substance that is prescribed for a patient shall be clearly noted in writing in the patient's office record with the date of prescribing indicated.

IV. Other Matters.

31. The parties agree that this Stipulation and Consent Order shall be a public document, shall be made part of Respondent's licensing file, and may be reported to other licensing authorities and/or entities including, but not limited to, the National Practitioner Data Bank and the Federation of State Medical Boards.

32. This Stipulation and Consent Order is subject to review and acceptance by the Vermont Board of Medical Practice and shall not become effective until presented to and approved by the Board. If the Board rejects any part of this Stipulation and Consent Order, the entire agreement shall be considered void. However, the parties agree that should the terms and conditions of this Stipulation and Consent Order be deemed acceptable by the Board, that the Vermont Board of Medical Practice may enter an order conditioning

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Respondent's license to practice medicine as set forth above and that such license be subject to each of the terms and conditions as set forth herein.

35. Respondent agrees to be bound by all terms and conditions of this Stipulation and Consent Order. Respondent agrees that the Board of Medical Practice shall retain jurisdiction to enforce all terms and conditions of this Stipulation and Consent Order during the lifetime of the agreement. Respondent expressly agrees that any failure by him to comply with the terms of this Stipulation and Consent Order, specifically including but not limited to its educational and record keeping requirements, may constitute unprofessional conduct under 26 V.S.A. §1354(25) and may subject Respondent to such further disciplinary action as the Board may deem appropriate.

Dated at Montpelier, Vermont, this 31st day of October, 2003.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

by: _____
JAMES S. ARISMAN
Assistant Attorney General

Dated at Rutland, Vermont, this 31 day of Oct, 2003.

_____
WILLIAM A. O'ROURKE, JR., M.D.
Respondent

Dated at Rutland, Vermont, this 31st day of October, 2003.

_____
R. JOSEPH O'ROURKE, ESQ.
Counsel for Respondent

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FOREGOING, AS TO WILLIAM A. O'ROURKE, JR., M.D.
APPROVED AND ORDERED
VERMONT BOARD OF MEDICAL PRACTICE

DATED: _____

ENTERED AND EFFECTIVE: _____

Draft III: O'Rourke_M.D.; JSA 10/03; Not Approved by BMP Until Executed and Entered Above

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